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m. Klemen

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

FILE: B-200537

DATE: May 6, 1981

MATTER OF: Champion Road Machinery International
Corporation**DIGEST:**

Where IFB clause permitting deviations to specifications to some unstated extent ensnared bidders into submitting nonresponsive bids, proper course of action was to cancel IFB and issue new solicitation accurately setting forth Government's legitimate needs.

[The Department of the Interior issued invitation for bids (IFB) FWS-1-80-113 for the procurement of one motor grader.] The IFB stipulated that the grader was to conform to Federal Specifications 00-6-630E, dated August 2, 1976, and other specifications set forth in the IFB.

The acceptance clause of the IFB provided as follows:

"The Government also reserves the right to accept bids deviating slightly, or in minor details from this specification where such deviation does not affect the performance of the motor grader and where such acceptance is in the best interest of the Government."

[Before bid opening, Champion Road Machinery International Corporation (Champion) advised the contracting officer of various specification deficiencies and their alleged restrictiveness. In response, the contracting officer called Champion's attention to the acceptance clause.]

[Three bids were opened on September 12, 1980. Champion's bid was low; however, Champion's bid was found nonresponsive for failure to meet seven IFB specifications.]

[Protest of IFB Specifications]

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{Interior awarded the contract to Rowand Machinery Company (Rowand), the second low bidder, even though the John Deere motor grader bid by Rowand lacked the specified eight reverse transmission speeds. Rowand's motor grader has been delivered and paid for.}

{After bid opening, Champion protested to our Office that the specifications were deficient and unduly restrictive in favor of the John Deere grader.}

{Interior claims that Champion's protest is untimely under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1980), since it was not submitted until after bid opening.}

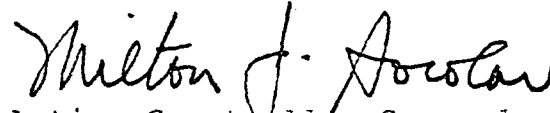
We find that Interior's position would result in an unduly harsh application of our Bid Protest Procedures. By calling attention to the acceptance clause of the IFB, the contracting officer reasonably could have led Champion to believe that it was not necessary to protest against the complained-of specifications. Thus, it is our view that Champion's protest is timely.}

The purpose of Federal procurement statutes and regulations is to give all persons an equal right to compete for Government contracts on a common basis. To this end, specifications should be sufficiently descriptive to permit full and free competition and specifications permitting deviations to some unstated extent are deficient. Science Management Corporation (Decision Studies Group), B-181281, July 3, 1974, 74-2 CPD 6.}

{When it came to the attention of the contracting officer that the acceptance clause ensnared two bidders into submitting nonresponsive bids, the proper course of action would have been to cancel the solicitation and issue a new IFB accurately setting forth the Government's legitimate needs. Science Management Corporation (Decision Studies Group), supra.}

{The protest is sustained.}

{ Since the grader has been delivered and paid for and Interior now recognizes the impropriety of the acceptance clause in that it precluded bidders from competing on a common basis and has taken corrective action, no further action need be taken by our Office. }



Acting Comptroller General
of the United States